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**IN THE
COURT OF APPEALS OF INDIANA**

JACK WESLEY, II,

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Terry K. Snow, Judge
Cause No. 30D01-0505-DR-347

June 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jack Wesley appeals the trial court's property distribution in the dissolution of marriage to his former wife, Deanna Wesley. We affirm.

Issue

Jack raises two issues, which we consolidate and restate as whether the trial court abused its discretion in valuing the marital residence and dividing its value.

Facts

Jack and Deanna married on May 17, 2002. The parties entered a valid prenuptial agreement on the same day, prior to the marriage ceremony. The prenuptial agreement excluded the marital residence from the marital estate. Jack had been gifted the real estate on which he built the house in 1996. On October 3, 2002, Jack transferred ownership of the residence to himself and Deanna as tenants by the entirety. The couple had one child together, born September 4, 2003. Deanna did not work outside the home after the birth of their son.

Jack and Deanna filed for dissolution on May 15, 2005. The trial court found that the fair market value of the home at the date of filing for dissolution was \$240,000, with an outstanding mortgage debt of \$91,421. The trial court found that the residence was no longer exempted by the prenuptial agreement, since Jack had commingled it. The trial court awarded the net home equity, \$148,579, to Jack and deducted an additional \$30,000 to represent a "set off for home equity prior to marriage." App. p. 33. This calculation amounted to a value of \$118,579 assessed to the home and awarded to Jack. The final distribution of assets, including a cash payment of \$49,008 by Jack to Deanna, resulted in

total net assets of \$77,983 and \$77,893 for Jack and Deanna, respectively. This appeal followed.

Analysis

The trial court issued findings of fact and conclusions of law at Jack's request and pursuant to Indiana Trial Rule 52. We use the following well-settled standard of review:

First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. Challengers must establish that the trial court's findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate questions of law de novo and owe no deference to a trial court's determination of such questions.

Carmichael v. Siegel, 754 N.E.2d 619, 625 (Ind. Ct. App. 2001) (citations omitted).

We review the trial court's division of marital assets for an abuse of discretion. Helm v. Helm, 873 N.E.2d 83, 89 (Ind. Ct. App. 2007). A party challenging the trial court's division of marital property must overcome a strong presumption that the trial court properly followed the applicable statute Id. (citations omitted). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances or when the trial court misinterprets the law or disregards evidence of

factors in the applicable statute. Id. “[W]e will reverse a property distribution only if there is no rational basis for the award, and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court.” Id. at 90-91 (quoting Augspurger v. Hudson, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004)).

Indiana law presumes that an equal division of the marital property is just and reasonable. Ind. Code § 31-15-7-5. This presumption may be rebutted if an equal division would not be just and reasonable, and the following factors should be considered in that instance: the contribution of each spouse in the acquisition of the property, the extent to which the property was acquired before the marriage or through inheritance or gift, the economic circumstances of each spouse, the conduct of the parties during the marriage regarding their use of the property, and the earnings abilities of each party. Id. If the trial court deviates from an equal division, it must state the reasons for doing so. Helm, 873 N.E.2d at 91.

The parties define the issue differently. Jack identifies the issue as whether the \$30,000 credit amounts to an improper deviation from the statutory presumption. He argues that the trial court’s \$30,000 credit is not supported by the evidence or the findings, and the ultimate distribution is wrong. He contends that the credit should have been much larger, \$123,734.17, which was the equity he had in the home prior to the marriage. Deanna contends the issue is only whether the trial court acted within its discretion to value the equity in the marital residence that was to be divided, which she concludes that it did.

After listing the net home equity at the time of filing as \$148,579, the trial court deducted \$30,000 in favor of Jack to represent the home equity he had earned prior to the marriage. This calculation amounted to a value of \$118,579 assessed to the home and awarded to Jack. After this deduction, the trial court distributed the assets, including a \$49,008 payment by Jack to Deanna. At first blush the distribution seems to result in a 50/50 split. See App. p. 33 (listing total net assets for wife at \$77,893 and total net assets for husband at \$77,892). Yet we must keep in mind that the deduction is a deviation because when taken into consideration, Jack's actual assets are \$107,892 (\$77,892 plus the \$30,000 deduction of actual value in the home) and not merely \$77,892. Although the figures for total net assets are nearly identical, when taking the deduction into account, it is clear that Jack received a favorable deviation—receiving approximately 58 percent to Deanna's approximately 42 percent of the marital assets.

The trial court set forth adequate findings to support this deviation. First, Jack “had a substantial equity interest in the residence before the marriage and the marriage was of short duration.” App. p. 30. This finding mirrors the statutory factors delineated Indiana Code Sections 31-15-7-5(1) and (2)—the contribution of each spouse to the acquisition of the property and the extent to which the property was acquired before the marriage or through inheritance or gift. Testimony indicated Jack received the property as a gift and built the home on it several years before the marriage. The trial court also found that Deanna initially worked outside the home and her income contributed to the family's expenses, but that she eventually left work to care for the couple's child and maintain the home. This finding counterbalances Jack's contribution to the home.

Jack essentially argues on appeal that the trial court did not deviate enough and he is entitled to the entire amount of his premarital equity in the home, which is \$123,734. His position is a request to reweigh evidence and re-distribute marital assets in an attempt for him to accumulate a larger share of the marital assets, and we decline to do so. Jack's contention that he is entitled to all the equity in the home prior to the marriage ignores the fact that he included Deanna on the deed to the home five months into the marriage. Although previously exempted by the prenuptial agreement, the home then became the marital property of the couple. The parties do not dispute this finding. The trial court was free to assess the home's value as joint marital property and deviate from the presumptive split of the same within its discretion. Although nothing in the trial court's findings specifically conflicts with its conclusion that Jack was entitled to a \$30,000 deviation, it would have been useful if the trial court specified why such an amount was chosen.¹ It also would have been more helpful for the trial court to calculate the \$30,000 deviation in the final total net assets to more accurately represent the 58/42 split. Nonetheless, we conclude that the trial court's findings and conclusions are not in conflict and affirm them.

Conclusion

The trial court did not abuse its discretion in valuing the marital home, deviating from a presumed equal split of that value, and dividing the marital assets. We affirm.

¹ During the dissolution proceeding, it came to light that the couple invested \$30,000 into the house for the building of a pool. That money was apparently loaned to them from Jack's family's business. The trial court did not find evidence of such a debt, however, and considered the money a gift. The trial court's findings and conclusions, however, do not expressly link this gift to the credited amount.

Affirmed.

CRONE, J., and BRADFORD, J., concur.